

Proposed Changes to Utah Underground Storage Tank Rules

Draft- for stakeholder comments. 10/6/03. Explanations of the proposed changes are italicized.

General- Several changes are made throughout the rules to improve punctuation and grammar, correct law, rule, and regulation citations, and be more correct and consistent in rule text formatting. Other changes are made to clarify the wording. The meaning remains the same, but the text is revised to be easier to read and understand.

R311. Environmental Quality, Environmental Response and Remediation.

R311-200. Underground Storage Tanks: Definitions.

R311-200-1. Definitions.

(a) Refer to Section 19-6-402 for definitions not found in this rule.

(b) For purposes of underground storage tank rules:

(1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(2) "As built drawing" (as constructed drawing, record drawing) for purpose of notification refers to a drawing to scale of newly constructed USTs. The UST shall be referenced to buildings, streets and limits of the excavation. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

(3) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping, or triggers an audible or visual alarm. An equivalent test may be approved by the Executive Secretary.

R311-200-1(b)(3). Defines what constitutes an automatic line leak detector performance test. Many tanks now have electronic line leak detectors or sump sensors used as leak detectors. This change is made to assure that the yearly tests on all leak detectors are performed properly to verify that the leak detectors function correctly.

([3]4) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.

([4]5) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.

([5]6) "Certificate" means a document that evidences certification.

([6]7) "Certification" means approval by the Executive Secretary or the Board to engage in the activity applied for by the individual.

([7]8) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

([8]9) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

([9]10) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(1[0]11) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Executive Secretary following the criteria in R311-211.

(1[1]2) "Department" means the Utah Department of Environmental Quality.

(1[2]3) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

(1[3]4) "Environmental Consultant" or "Consultant" is an individual who provides or contracts to provide information, an opinion, or advice for a fee, or in conjunction with services for which a fee is charged, relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation.

(1[4]5) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(1[5]6) "EPA" means the United States Environmental Protection Agency.

(1[6]7) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Executive Secretary.

(1[7]8) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(1[8]9) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(1[9]20) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(2[0]1) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(2[1]2) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Executive Secretary.

(2[2]3) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(2[3]4) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(2[4]5) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(2[5]6) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(2[6]7) "Owners and operators" means either an owner or operator, or both owner and operator.

(2[7]8) "Overexcavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(2[8]9) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Section R311-202.

(2[9]30) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(3[0]1) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(3[1]2) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(3[2]3) "Registration fee" means underground storage tank registration fee.

(3[3]4) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of

separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(3[4]5) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(3[5]6) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(3[6]7) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(3[7]8) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(3[8]9) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Executive Secretary.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Executive Secretary.

([39]40) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(4[0]1) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205. [~~the "Utah Water Quality Monitoring Manual", 1986, or in "EPA Test Methods for Evaluating Solid Waste", SW-846, Vol. 2 Field Manual, Section 9.31-9.79.~~]

(4[1]2) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(4[2]3) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63-46b-1(2)(k), Utah Code Annot.

(4[3]4) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(4[4]5) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(4[5]6) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(4[6]7) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations.

(4[7]8) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It

~~includes; or, the repair of an underground storage tank or any part thereof] any operation that is critical to the integrity of the system and to the protection of the environment, which includes:~~

~~_____ (A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;~~

~~_____ (B) vent and product piping assembly;~~

~~_____ (C) cathodic protection installation, service, and repair;~~

~~_____ (D) internal lining;~~

~~_____ (E) secondary containment construction; and~~

~~_____ (F) UST repair and service.~~

R311-200-1(b)(48). Change the definition of an UST installation to include additional operations related to the UST that are critical to the integrity of the UST system, rather than just the initial installation. UST installation would include UST repair, cathodic protection installation, internal lining and inspection, and secondary containment construction. The change will also allow for certification of individuals who perform any of these operations.

(4[8]9) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

([49]50) "UST installer" means an individual who engages in underground storage tank installation.

(5[0]1) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(5[1]2) "UST remover" means an individual who engages in underground storage tank removal.

(5[2]3) "UST tester" means an individual who engages in UST testing.

(5[3]4) "UST testing" means a testing method which can detect leaks in an underground storage tank system, or testing for compliance with corrosion protection requirements. Testing methods must meet applicable performance standards of 40 CFR [Parts-]280.40(a)(3), 280.43(c), and 280.44(b)[~~as adopted by Section R311-202;~~] for tank and product piping tightness testing, 280.44(a) for automatic line leak detector testing, and 280.31(b) for cathodic protection testing. Tank tightness testing [The testing-] methods [at a minimum, must be able to test the underground storage tank system at the maximum level that could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by that device.

R311-200-1(b)(54). Definition of UST testing. Several issues have arisen regarding the various types of tests that are commonly done on UST systems, and the requirements for those who perform the tests. The rules currently specify that individuals who perform UST tests must be certified, but the definition of UST testing is limited to precision tightness tests. This change would add cathodic protection testing and line leak detector performance testing to the definition of UST Testing. This will allow for certification of individuals who perform those tests, and help ensure that the tests are properly done.

KEY: hazardous substances, petroleum, underground storage tanks*

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R311. Environmental Quality, Environmental Response and Remediation.

R311-201. Underground Storage Tanks: Certification Programs.

R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Certification Requirement.

(a) Certified UST Consultant. After December 31, 1995, no person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Executive Secretary shall contain the Certified UST Consultant's signature. After December 31, 1995, any release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Executive Secretary.

(b) UST Inspector. After December 31, 1989, no person shall conduct underground storage tank inspection for determining compliance with Utah underground storage tank rules without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any underground storage tank inspections for determining compliance with Utah underground storage tank rules to be conducted on a tank under their ownership or operation unless the person conducting the tank inspection is certified according to Rule R311-201.

(c) UST tester. After December 31, 1989, no person shall conduct UST testing without having certification to conduct such activities. After December 31, 1989, no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201. Certification by the Executive Secretary under this Rule for tank, line and leak detector testing shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment or by training determined by the Executive Secretary to be equivalent to the manufacturer training. The Executive Secretary may issue a limited certification restricting the type of UST testing the applicant can perform.

R311-201-2(c) and (e). Certification of installers and testers. This allows for issuing limited certifications for UST testers and installers, so individuals who perform certain types of testing or partial installations can be certified without having to meet all the requirements for a "full" certification. Individuals who only install or test cathodic protection, test leak detectors, or only service automatic tank gauging systems, will be able to get a limited certification for the specific work without having to meet all the requirements for the full certification.

(d) Groundwater and soil sampler. After December 31, 1989, no person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. After January 1, 1991, no person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Executive Secretary may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. After January 1, 1991, no person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

R311-201-3. Application for Certification.

(a) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Executive Secretary to demonstrate that the applicant

(1) meets applicable eligibility requirements specified in Subsection R311-201-4 and
(2) will maintain the applicable performance standards specified in Subsection R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Executive Secretary for determination of eligibility for certification. If the Executive Secretary determines that the applicant meets the applicable eligibility requirements described in Subsection R311-201-4 and meets the standards described in Subsection R311-201-6, the Executive Secretary shall issue to the applicant a certificate.

(c) Certification for all certificate holders except UST inspectors shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Inspector certificates shall be effective for a period of one year from the date of issuance. Certificates shall be subject to periodic renewal pursuant to Subsection R311-201-5.

R311-201-4. Eligibility for Certification.

(a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Executive Secretary to provide training to include the following areas: state and federal statutes, rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, ~~or~~and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Executive Secretary.

(3) Education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the Executive Secretary;~~or~~

(B) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act or equivalent certification as determined by the Executive Secretary~~]; or~~

(C) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the Executive Secretary.

R311-201-4(a)(3)(C). Wording is added to specify that an individual who holds a Utah Professional Geologist certificate will meet the Education requirement for certification as a Utah Certified UST Consultant.

(4) Initial Certification Examination. Each applicant who is not certified pursuant to R311-201-3 must successfully pass an initial certification examination or equivalent administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). An individual who successfully passes the examination will be provided with documentation to complete the application requirements.

(5) Renewal Certification Examination. Certified UST Consultants seeking to renew their certification pursuant to R311-201-5 must successfully pass a renewal certification examination or equivalent administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination. An individual who successfully passes the renewal certification examination will be provided with documentation to complete the application requirements.

(6) Examination for Revoked or Expired Certification. Any applicant who is not a Certified UST Consultant on the date the renewal certification examination is given, because the consultant's prior UST Consultant certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under R311-201-4(a)(4).

(b) UST Inspector.

(1) Training. For initial certification, an applicant must have successfully completed an underground storage tank inspector training course or equivalent within the six month period prior to application. ~~The training course shall be~~ ~~in a program~~ approved by the Executive Secretary ~~to provide training~~ ~~and shall~~ ~~to~~ include ~~instruction in~~ the following areas: corrosion, geology, hydrology, tank handling, tank testing, product piping testing, disposal, safety, sampling methodology, state site inspection protocol, state and federal statutes, rules and regulations. Renewal certification training will be established by the Executive Secretary. The applicant must provide documentation of training with the application.

(2) ~~Certification Examination.~~ An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and ~~subsequent~~ renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(b)(1), and the standards and criteria against which the applicant will be evaluated. ~~[An individual who successfully passes an examination will be provided with documentation to include with the application]~~ The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-4(b)(2). Recently several alternative continuing education courses have become available to certified individuals for certification. This change allows certified individuals to take an approved alternate course or test that is informative, but not necessarily as comprehensive as the initial certification course. This change also applies to certification for UST Testers, Installers, Groundwater/soil samplers, and Removers, and is indicated in the corresponding rule sections for those certifications.

(c) UST Tester.

(1) Financial Assurance. An applicant or applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the certification application.

(2) Training.

~~(A) Tank and product piping tightness testing, and automatic line leak detector testing.~~ For initial certification, an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that he will be using, or a training course determined by the Executive Secretary to

be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. An applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that he will be using, or training as determined by the Executive Secretary to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. For renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate. In addition, an applicant must complete underground storage tank testers training within the six month period prior to application in a program approved by the Executive Secretary to provide training to include applicable and related areas of state and federal statutes, rules and regulations. Renewal certification training will be established by the Executive Secretary. The applicant must provide documentation of training with the application.

(B) Cathodic protection testing. For initial and renewal of certification, the applicant shall provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

R311-201-4(c)(2). Defines training requirements for cathodic protection testing.

(3) Performance Standards of Equipment. An applicant shall submit documentation ~~[which]~~that demonstrates the UST testing equipment used by the applicant meets performance standards of 40 CFR Part 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing. This documentation shall be obtained through an independent lab, professional engineering firm, or ~~[some]~~other independent organization or individual approved by the Executive Secretary. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and~~[subsequent]~~ renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. ~~[An individual who successfully passes an examination will be provided with documentation to include with the application]The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.~~

(d) Groundwater and soil sampler.

(1) Training. For initial~~[and renewal]~~ certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. ~~The training course shall be [in a program]~~approved by the Executive Secretary and shall ~~[to provide training to]~~include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined by the Executive Secretary. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. ~~[An individual who successfully passes an examination will be provided with documentation to include with the application]The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.~~

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest

underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial~~[-and renewal]~~ certification, an applicant must have successfully completed an underground storage tank installer~~[-approved]~~ training course or equivalent within the six-month period prior to the application. ~~The training course shall be [in a program]~~ approved by the Executive Secretary, ~~[to provide training to]~~ and shall include instruction in the following areas: tank installation, preinstallation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and~~[-subsequent]~~ renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. ~~[An individual who successfully passes an examination will be provided with documentation to include with the application]~~ The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial~~[-and renewal]~~ certification, an applicant must have successfully completed an underground storage tank remover approved training course or equivalent within the six-month period prior to the application. ~~The training course shall be [in a program]~~ approved by the Executive Secretary and shall~~[to provide training to]~~ include instruction in the following areas: tank removal, tank removal safety practices, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and~~[-subsequent]~~ renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(f)(2), and the standards and criteria against which the applicant will be evaluated. ~~[An individual who successfully passes an examination will be provided with documentation to include with the application]~~ The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-5. Renewal.

(a) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by submitting:

(1) a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in R311-201-4 and meets the applicable performance standards specified in R311-201-6, and

(2) any applicable fees.

(b) If the Executive Secretary determines that the applicant meets the applicable eligibility requirements of R311-201-4 and the applicable performance standards of R311-201-6, the Executive Secretary shall reissue the certificate to the applicant.

(c) Renewal certificates shall be issued for a period equal to the initial certification period, and shall be subject to inactivation under R311-201-8 and revocation under R311-201-9.

(d) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under R311-201-4 for the applicable certificate before receiving the renewal certification, except as provided in R311-201-4(a)(6) for certified UST consultants.

R311-201-5(d). This change requires that people whose certification has been expired for more than 2 years must satisfy the training and examination requirements for initial certification before receiving a renewal certification. This does not apply to UST consultant certifications, which are handled differently in R311-201-4(a)(6).

R311-201-6. Standards of Performance.

(a) Certified UST Consultant. An individual who provides UST consulting services in the State of Utah:

- (1) shall display the certificate upon request;
- (2) shall comply with all local, state and federal laws, rules and regulations regarding UST release-related consulting in this state;
- (3) shall provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;
- (4) shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;
- (5) shall perform work and submit documentation in a timely manner as determined by the Executive Secretary and in a format established by the Division of Environmental Response and Remediation, as outlined in the most recent Consultant's Day Seminar Handbook;
- (6) shall review and certify by signature any documentation submitted to the Executive Secretary in accordance with UST release-related compliance;
- (7) shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;
- (8) shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah underground storage tank rules, or report the results indicating that a release may have occurred, to the local health district, local public safety office and the Executive Secretary within twenty-four hours;
- (9) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,
- (10) shall not participate in any other activities regulated under Rule R311-201 without meeting all requirements of that certification program.

(b) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

- (1) shall display his certificate upon request;
- (2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank inspecting in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing tank inspecting to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Executive Secretary.

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(7) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(c) UST Tester. An individual who performs UST testing in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST testing in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank testing to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release or suspected release from an underground storage tank or which would falsify UST testing results of the underground storage tank system;

(8) shall perform work in a manner that the integrity of the underground storage tank system is maintained; and,

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(d) Groundwater and soil sampler. An individual who performs environmental sampling for compliance with Utah underground storage tank rules:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank sampling in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing groundwater or soil sampling or report the results indicating that a release may have occurred to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(6) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(e) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank installation in this state;

- (3) shall perform all work in a manner that there is no release of the contents of the tank;
- (4) shall report the discovery of any release caused by or encountered in the course of performing tank installation to the local health district, local public safety office and the Executive Secretary within twenty-four hours;
- (5) shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment which includes preinstallation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair shall be supervised by a certified person;
- (6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
- (7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and
- (8) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.
- (9) shall notify the Executive Secretary 30 days before installing or upgrading an UST.
- (f) UST Remover. An individual who performs underground storage tank removal in the State of Utah:
 - (1) shall display his certificate upon request;
 - (2) shall comply with all local, state and federal laws and regulations regarding underground storage tank removal in this state;
 - (3) shall perform all work in a manner that there is no release of the contents of the tank;
 - (4) shall report the discovery of any release caused by or encountered in the course of performing tank removal to the local health district, local public safety office and the Executive Secretary within twenty-four hours;
 - (5) shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person;
 - (6) shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b);
 - (7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
 - (8) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and
 - (9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program, except as outlined in Subsection R311-204-5(b).

R311-201-7. Denial of Certification and Appeal of Denial.

Any individual whose application or renewal application for certification or certification renewal is denied shall be provided with a written documentation by the Executive Secretary specifying the reason or reasons for denial. An applicant may appeal that determination to the Solid and Hazardous Waste Control Board using the procedures specified in Section 63-46b-1, et seq., and Rule R311-210.

R311-201-8. Inactivation of Certification.

If an applicant was certified based upon his employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer. If the employer loses his financial assurance or the applicant leaves the employer, his certificate shall automatically be deemed inactive and he shall no longer

be certified for purposes of this Rule. Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees. Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

R311-201-9. Revocation of Certification.

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked by the Executive Secretary. Any appeal proceedings by the individual shall be conducted in accordance with the requirements of Section 63-46b-1, et seq., using informal procedures.

R311-201-10. Reciprocity.

If the Executive Secretary determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Section R311-201-3(c), as appropriate, whichever is first.

R311-201-11. Work Performed by Licensed Engineers or Geologists.

(a) All work that qualifies as Professional Engineering or the Practice of Engineering, as defined in Section 58-22-102, shall be performed by or under the personal direction of a licensed Professional Engineer, or as qualifying under exemptions stated in Section 58-22-305. All documents and other work products submitted to the division for work that is performed under Section 58-22-102, shall be stamped and signed by an individual licensed under Section 58-22-301.

(b) All work that qualifies as the Practice of Geology Before the Public, as defined in Section 58-76-102, shall be performed by or under the personal direction of a licensed Professional Geologist, or as qualifying under exemptions stated in Section 58-76-304. All documents and other work products submitted to the division, for work that is performed under Section 58-76-102, shall be stamped and signed by an individual licensed under Section 58-76-301.

R311-201-11. This section is added to specify that work performed under the statutory definitions of Professional Engineering (58-22-102) and the Practice of Geology Before the Public (58-76-102) must be performed by licensed professional engineers and geologists, and must be properly stamped and signed by the licensed individual.

KEY: hazardous substances, petroleum, underground storage tanks*

July 17, 2000

Notice of Continuation March 6, 2002

19-6-105

19-6-402

19-6-403

R311. Environmental Quality, Environmental Response and Remediation.

R311-203. Underground Storage Tanks: Notification, New Installations, ~~[and]~~Registration Fees, and Testing Requirements.

R311-203-1. Definitions.

Definitions are found in Section R311-200.

R311-203-2. Notification.

(a) The owner or operator of an underground storage tank shall notify the Executive Secretary whenever:

- (1) new USTs are brought into use;~~[-or]~~
- (2) the owner or operator changes;~~[-or]~~
- (3) changes are made to the tank or piping system; or
- (4) release detection, corrosion protection, or spill or overfill ~~[protection]~~prevention systems are installed, changed or upgraded.

(b) All notifications shall be submitted on the current approved notification form within 30 days of the completion of the work or the change of ownership.

(c) Notifications shall include the latitude and longitude of the facility.

(d) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:

(1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(2) provide separate notification to the Executive Secretary within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

(a) Certified UST installers who intend to perform any of the activities listed in R311-203-3(c) or R311-203-3(d)(1) through (4) shall notify the Executive Secretary at least 30 days before commencing the activity.

(b) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.

(c) The UST installation company shall submit to the Executive Secretary an UST installation permit fee of \$200 ~~[for]when the following work is performed on an UST system which has not qualified for a certificate of compliance before the commencement of the work:~~

- (1) each full UST system installation;
- (2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
- (3) the internal lining of a previously-existing tank;
- (4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility where the structural integrity of the UST was required to be assessed, or there is no documentation of a properly working cathodic protection system on the UST within 10 years of the proposed upgrade;
- (5) the installation of a bladder in a tank, or any other retro-fit, replacement, or installation that requires the cutting of a manway into the tank, or
- (6) installation of other UST system components as determined by the Executive Secretary.

R311-203-3(c). The Underground Storage Tank act provides that certified installation companies pay yearly fees and a tank installation permit fee of \$200 per tank to receive coverage under the Petroleum Storage Tank fund, but the Act limits the coverage to work done before the certificate of compliance is issued for the facility (19-6-424(2)). The Act (19-6-411(2)(b)) also specifies that the Board shall "make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed." As currently written, the rules require payment of the \$200 per tank installation company permit fee for situations where less than a full installation is performed: new piping installation, cathodic protection system installation,

tank lining, etc. Because the Fund only covers work done before the certificate of compliance is issued, much work is performed for which the installation company receives no coverage, because the certificate of compliance already issued remains in force during the upgrade. The rule is changed to specify that the \$200 fee is paid only for a full UST installation and for certain work done on a tank which does not have a certificate of compliance (upgrade of a non-certified tank, for example). The changes will remove the requirement that the installation company pay the fee in situations when the company does not receive any PST Fund coverage.

(d) The UST installation permit fee shall not be required when the following activities are performed separately from the activities listed in R311-203-3(c):

- (1) installation of spill prevention devices;
- (2) installation of overfill prevention devices;
- (3) installation of a leak detection monitoring system;
- (4) installation of an automatic line leak detector; or
- (5) replacement or repair of valves, dispensers, or leak detection system components.

(e) When a new ~~[tank]~~UST system, tank only, or product piping only is installed, the owner or operator shall submit to the Executive Secretary a site plat or an as-built drawing, to scale, which shall include: the excavation, buildings, tanks, product lines, vent lines, cathodic protection systems, tank leak detection systems, and product line leak detection systems.

(f) For the purposes of Sections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(d), an installation shall be considered complete when:

- (1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or
- (2) in the case of installation of the components listed in Section R311-203-3(c)(3) through R311-203-3(c)(6), the new installation is functional and the UST holds a regulated substance and is operational.

(g) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Executive Secretary of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(h) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

R311-203-4. Underground Storage Tank Registration Fee.

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and ~~shall be~~ billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is ~~being~~ made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Executive Secretary may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Sections R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(d) The Executive Secretary shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

- (1) the tanks are in use or ~~are~~ temporarily closed according to 40 CFR Part 280 Subpart G~~[-adopted by Section R311-202]~~; and,
- (2) the underground storage tank registration fee has been paid.

R311-203-5. UST Testing Requirements.

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level which could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(b) Automatic line leak detector testing. Line leak detectors shall be tested annually for functionality according to 40 CFR 280.44(a) and R311-200-1(x). The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump.

(c) Containment sump testing. When a sump sensor is used as a leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Executive Secretary.

(d) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b)(2), or other criteria approved by the Executive Secretary. The tester who performs the test shall provide the following information: location of test points, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points.

(e) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

R311-203-5. This section is added to provide requirements for UST testing. Changes are proposed in R311-200 and R311-201 to redefine UST testing to include automatic line leak detector testing and cathodic protection testing, and to require that individuals who perform those tests be certified as UST Testers. R311-203-5 is added to provide requirements for tank, automatic line leak detector, containment sump, and cathodic protection testing, and to specify the information to be submitted by the tester with the test results.

KEY: fees, hazardous substances, petroleum, underground storage tanks*

July 14, 1997

Notice of Continuation March 6, 2002

19-6-105

19-6-408

R311. Environmental Quality, Environmental Response and Remediation.

R311-204. Underground Storage Tanks: Closure and Remediation.

R311-204-1. Definitions.

Definitions ~~[for this rule]~~ are found in Section R311-200.

R311-204-2. Underground Storage Tank Closure Plan.

(a) Owners or operators of all underground storage tanks or any portion thereof which are to be permanently closed or undergo change-in-service shall submit a permanent closure plan to the Executive Secretary of the Utah Solid and Hazardous Waste Control Board. The permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with 40 CFR 280 Subpart G.

(b) ~~[Tanks which are]~~ If a tank is to be removed as part of corrective action as allowed by 40 CFR 280 Subpart G, the owner or operator is ~~[are]~~ not required to submit a closure plan, but must meet the

requirements of 40 CFR 280.66(d) before any removal activity takes place, and must submit a corrective action plan as required by 40 CFR 280.66.

(c) The closure plan ~~[must]~~shall address applicable issues involved with permanent closure or change-in-service, ~~including[which includes]~~: tank disposal handling and final disposal site, product removal, sludge disposal, vapor purging or inerting, removing or securing ~~[or]~~and capping product piping, removing vent lines or securing vent lines open, tank cleaning, environmental sampling, contaminated soil and water management, in-place tank disposal or tank removal, transportation of tank, permanent disposal and other disposal activities which may affect human health, human safety or the environment.

(d) No underground storage tank shall be permanently closed or undergo change-in-service prior to the owner~~[s]~~ or operator receiving final approval of the submitted permanent tank closure plan by the Executive Secretary, except as outlined in Subsection R311-204-2(b). Closure plan approval shall be effective for a period of one year. If the underground storage tank has not been permanently closed or undergone change in service as proposed within one year following approval from the Executive Secretary, the plan must be re-submitted for approval, unless otherwise approved by the Executive Secretary.

(e) Permanent closure plans shall be prepared using the current approved form~~[s]~~ according to guidance furnished by the Executive Secretary.

(f) ~~[Approved permanent closure plans shall be on site during the entire closure activity. It is the responsibility of t]~~The owner or operator ~~[to assure]~~shall ensure that the approved permanent closure plan and approval letter are on site during all closure activities.

(g) Any deviation~~[s]~~ from or modification~~[s]~~ to an approved closure plan must be approved by the Executive Secretary prior to implementation, and must be submitted in writing to the Executive Secretary.

(h) The Executive Secretary shall be notified at least 72 hours prior to the start of closure activities.

R311-204-3. Disposal.

(a) Tank labeling. All tanks which are permanently closed by removal must be labeled immediately after being ~~[pulled]~~removed from the ground with the facility identification number and information about previously contained substances.

(1) Removed tanks which have contained motor fuels or other regulated products, except leaded motor fuels, must be labeled with letters at least two inches high which read:

"CONTAINED (UNLEADED GASOLINE, DIESEL OR OTHER AS APPROPRIATE), FLAMMABLE. REMOVED: MONTH/DAY/YEAR."

(2) Removed tanks which have contained leaded motor fuel, or whose service history is unknown, must be labeled with letters at least two inches high which read:

"CONTAINED LEADED GASOLINE. HEATING RELEASES LEAD VAPORS, FLAMMABLE. REMOVED: MONTH/DAY/YEAR."

(b) Removed tanks shall be expeditiously disposed of as regulated underground storage tanks by the following methods:

(1) The tank may be cut up after the interior atmosphere is first purged or inerted.

(2) The tank may be crushed after the interior atmosphere is first purged or inerted.

(3) The tank may not be used to store food or liquid intended for human or animal consumption.

(4) The tank may be disposed of in a manner approved by the Executive Secretary.

(c) Tank transportation. Used tanks which are transported on roads of the State of Utah must be cleaned inside the tank prior to transportation, and be free of all product, free of all vapors, or rendered inert during transport.

R311-204-4. Closure Notice.

(a) Owners or operators of underground storage tanks which ~~[have been]~~were permanently closed or had a change-in-service prior to December 22, 1988 shall submit a completed closure notice, unless the tanks were properly closed on or before January 1, 1974.

(b) ~~[The closure notice shall be submitted on the current approved closure notice form.]~~

~~_____ (c)]Owners or operators of underground storage tanks which [have been]are permanently closed[; had] or have a change-in-service [or temporary closed over 12 months duration,]after December 22, 1988 shall submit a completed closure notice form and the following information within 90 days after tank closure:~~

(1) All results from the closure ~~site~~ assessment conducted in accordance with Section R311-205, including analytical laboratory results and chain of custody forms.

(2) Effective January 1, 1993, a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat ~~[should]~~shall include: scale, north arrow, streets, property boundaries, building structures, utilities, underground storage tank system location, location of any contamination observed or suspected during sampling, location and volume of any stockpiled soil, the extent of the excavation zone, and any other relevant features. All sample identification numbers used on the site plat ~~[must]~~shall correspond to the chain of custody form[;] and the lab analysis report.

~~(c) Owners and operators of underground storage tanks that are temporarily closed for a period greater than three months shall submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.~~

~~_____ (d) All closure notices for permanent and temporary closure shall be submitted on the current approved forms.~~

R311-204-4(c). The federal regulations (40 CFR 280.70) have requirements regarding tanks which are temporarily closed for three months or longer, but the state rules do not have any requirement that the owner/operator notify the DERR of the temporary closure status. Wording is added to require the owner/operator to submit a temporary closure notice within 120 days of the beginning of temporary closure, if the tank is temporarily closed for a period longer than three months.

R311-204-5. Remediation.

(a) Any UST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a Certified UST Consultant, except as outlined in sections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii), and R311-204-5[-](b).

(b) ~~[A]~~At the time of UST closure, a certified UST Remover may overexcavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the Executive Secretary, in addition to the minimum amount required for ~~[removal]closure~~ of the UST~~[-at the time of tank removal]~~. This overexcavation may be performed without the ~~[approval]~~supervision of a certified UST Consultant. Appropriate confirmation samples must be taken by a certified groundwater and soil sampler in accordance with R311-201 for the purpose of determining the extent and degree of contamination.

KEY: hazardous substances, petroleum, underground storage tanks*

October 9, 1998

Notice of Continuation March 6, 2002

19-6-105

19-6-402

19-6-403

R311. Environmental Quality, Environmental Response and Remediation.

R311-205. Underground Storage Tanks: Site Assessment Protocol.

R311-205-1. Definitions.

Definitions are found in ~~[Section]~~Rule R311-200.

R311-205-2. Site Assessment Protocol.

R311-205-2. Underground Storage Tanks; Site Assessment Protocol.

This Rule is being modified to clarify appropriate laboratory analytical methods to be used when testing environmental samples for contaminant levels, and to simplify the redundant language used throughout the text. Similar site assessment requirements for tanks, piping and dispenser islands have been consolidated to reduce redundancy. Some non-substantive language has been added or deleted to make the requirements easier to understand.

(a) General Requirements.

(1) ~~[For all locations that have underground storage tanks regulated by 40 CFR 280, and require a]~~
When a site assessment or site check is required, pursuant to 40 CFR 280[Subparts E, F, or G] or Subsection 19-6-428(3), owners or operators shall perform or commission to be performed a site assessment or a site check according to the protocol outlined in [Section]Rule R311-205 or equivalent, as approved by the Executive Secretary. [This protocol is a minimum requirement which does not prohibit the collecting of additional samples when needed and is intended to support and supplement requirements of 40 CFR 280, Parts 280.52 and 280.72.] Additional environmental samples must be collected when contamination is found, suspected, or as requested by the Executive Secretary. [Samples shall be collected in a manner that will detect a release from any portion of the UST.]

(2) Groundwater samples shall be collected in accordance with the "EPA RCRA Ground-water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), 1986 or as determined by the Executive Secretary. Surface water samples shall be collected in accordance with protocol established in the ["Utah Water Quality Monitoring Manual", 1986, or in "EPA Test Methods for Evaluating Solid Waste", SW-846, Vol. 2 Field Manual, Section 9.31-9.79]"EPA Compendium of ERT Surface Water and Sediment Sampling Procedures" January 1991, or as determined by the Executive Secretary. Soil samples shall be collected in accordance with the "EPA Description and Sampling of Contaminated Soils, A Field Pocket Guide", November 1991 or as determined by the Executive Secretary.

([2]3) Owners and operators must document and report to the Executive Secretary sample types, sample locations and depths, field and sampling measurement methods, the nature of the stored substance, the type of backfill and native soil, the depth to groundwater, and other factors appropriate for identifying the [presence, the]source area and the degree and extent of subsurface soil and groundwater contamination. [This documentation and reporting is required for UST closures pursuant to 40 CFR 280, Subpart G, and for any abatement, investigation or assessment, monitoring, remediation or corrective action activities performed to fulfill release response and remediation requirements of 40 CFR 280, Subparts E and F.

~~_____~~ (3) Owners and operators must comply with site assessment protocols, documentation and reporting requirements stipulated in Sections R311-205-2(a)(1) and (2) and with the testing and site check requirements in R311-205-2(c) when applying to participate in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation in the Fund. This site assessment, documentation and reporting is required for sites re-applying for fund participation pursuant to Section 19-6-428(3)(a)].

(4) The owner or operator shall report the discovery of any release or suspected release to the Executive Secretary within twenty-four hours. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release. Owners or operators shall begin release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(5) All environmental samples shall be collected by a certified groundwater and soil sampler who meets the requirements of [Section]Rule R311-201. The certified groundwater and soil sampler shall record the depth below grade and location of each sample collected to within one foot.

(6) All environmental samples ~~[must]~~shall be analyzed within the time frame allowed, in accordance with Table 4.1 of the "EPA RCRA Ground-water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), by a Utah Certified Environmental Laboratory approved by the Executive Secretary. Soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

(7) Environmental samples for UST permanent closure or change in service shall be collected according to the protocol outlined in Subsection R311-205-2(b), after the UST system is emptied and cleaned and after the closure plan has been approved.

(8) Environmental confirmation samples are required following overexcavation of soils. Confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent and degree of a release from any portion of the UST in accordance with 40 CFR 280, Subparts E, F and G. Additional confirmation samples may be required as determined by the Executive Secretary.

(9) Upon confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and all other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the Executive Secretary within the specified time frames as outlined in compliance schedules.

(10) When conducting environmental sampling to satisfy the requirements of 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as outlined in compliance schedules, or as determined by the Executive Secretary. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the Executive Secretary, may be used to satisfy requirements of determining native soil type.

(9)11 Other types of environmental or quality assurance samples may be required as determined by the Executive Secretary.

(b) Site Assessment Protocol for UST Closure.

[(1) When UST testing is required, the owner or operator shall test the underground storage tanks and product piping for tightness according to standards established in 40 CFR 280, Subpart D. If the test indicates a release has occurred from the tank or product piping, then the tank or product piping shall be closed in compliance with 40 CFR 280, Subpart G, and Section R311-204, or repaired, or replaced. Tanks and product piping which are repaired or replaced shall be retested to demonstrate that the tanks or product piping are no longer releasing product. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release, and release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(2) Tank excavation:]

[(A)1] [In-place evaluations. For facilities undergoing in-place evaluations with one tank, a minimum of two soil samples, one from each end of the tank,]The appropriate number of environmental samples, as described in Subsection R311-205-2(b)(4) shall be collected in native soils, below the [tank] backfill material, and as close as technically feasible to [each end of] the tank, piping or dispenser island. Any other samples required by Subsection R311-205-2(a)[(1)] must also be collected. [For facilities undergoing in-place evaluations with two or more tanks adjacent to one another, a minimum of four soil samples shall be collected in native soils, below the tank backfill material, one at each corner of the tank area, and as close to the tank ends as is technically feasible. Any other samples required by Section R311-205-2(a)(1) must also be collected.] Soil samples shall be collected from a depth of zero to two feet below the [tank] backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, [then a minimum of one groundwater sample and one soil sample,] the soil samples required by Subsection R311-205-2(b)(4) shall be collected from the unsaturated zone immediately above the capillary fringe.[, shall be collected at each end of the tank area.] Groundwater samples shall be collected using proper surface water collection techniques, [or]from a properly installed groundwater monitoring well, or as [established]determined by the Executive Secretary. All environmental samples shall be analyzed using [methodologies]the appropriate analytical methods outlined in Subsection R311-205-2(d).

(2) One soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental samples, at each tank and product piping area. For all dispenser islands, only one representative sample to determine native soil type is required.[as indicated for environmental samples to determine native soil type]. Techniques of the Unified Soil Classification such as a sieve analysis or

laboratory classification, ~~[may]~~shall be used to satisfy requirements of determining native soil type when taking samples for UST closure.

~~(3) For purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in-place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.~~

~~(4) Environmental Sampling Protocol for UST closures:~~

~~(A) For a tank area containing one UST, one soil sample shall be collected at each end of the tank. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.~~

~~(B) For a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.~~

~~(C) Product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections and fittings, at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.~~

~~(D) For dispenser islands, environmental samples shall be collected from the middle of each dispenser island. Additional environmental samples shall be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater was encountered.~~

~~[(B) Closure by removal evaluations. For facilities which have excavation zones with one tank, a minimum of two soil samples, one from each end of the tank, shall be collected in native soils, below the tank backfill material, and as close as technically feasible to each end of the tank. Any other samples required by Section R311-205-2(a)(1) must also be collected. For facilities which have excavation zones with two or more tanks adjacent to one another, a minimum of four soil samples shall be collected in native soils, below the tank backfill material, one at each corner of the tank excavation, and as close to the tank ends as is technically feasible. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the tank backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected at each end of the tank excavation. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.~~

~~——— (3) Dispenser islands:~~

~~——— (A) In-place evaluations. Environmental samples shall be collected at locations as close to where the piping enters the dispenser islands as is possible. An environmental sample shall be collected at each dispenser island in a location as to never allow more than 25 linear feet of piping in a single excavation to go unsampled. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soils. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the~~

same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type:

~~—— (B) Closure by removal evaluations. Environmental samples shall be collected at locations as close to where the piping enters the dispenser islands as is possible. An environmental sample shall be collected at each dispenser island in a location as to never allow more than 25 linear feet of piping in a single excavation to go unsampled. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soils. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.~~

~~—— (4) Product piping.~~

~~—— (A) In-place evaluations. One product piping soil sample shall be collected at each piping excavation in an area where leaking is most likely to occur such as joints, connections and fittings, and at intervals to never allow more than 50 linear feet of piping in a single excavation to go unsampled. Any other samples required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soil. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.~~

~~—— (B) Closure by removal evaluations. One product piping soil sample shall be collected at each piping excavation in an area where leaking is most likely to occur such as joints, connections and fittings, and at intervals to never allow more than 50 linear feet of piping in a single excavation to go unsampled. Any other samples as required by Section R311-205-2(a)(1) must also be collected. Soil samples shall be collected from a depth of zero to two feet beneath the product piping backfill material and native soil interface or as close to the product piping as is technically feasible in native soils. If groundwater is contacted in the process of collecting the soil samples, then a minimum of one groundwater sample and one soil sample, collected from the unsaturated zone immediately above the capillary fringe, shall be collected. Groundwater samples shall be collected using proper surface water collection techniques or from a properly installed groundwater monitoring well as established by the Executive Secretary. All environmental samples shall be analyzed using methodologies outlined in Section R311-205-2(d). One soil sample shall be collected at the same depth as indicated for environmental samples to determine native soil type. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification may be used to satisfy requirements of determining soil type.]~~

(c) ~~[Testing and]~~ Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program ~~[following a Period on Non-participation or Applying for Reinstatement in the Fund Program following a Period of Lapse].~~

(1) Owners or operators ~~[of sites]~~ wishing to re-apply for participation in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation~~[- must]~~ shall perform a tank tightness test

and site check pursuant to Subsection 19-6-428(3)(a). The tank tightness test and site check ~~[must]~~shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

~~[(A) The owner or operator shall test the underground storage tanks and product piping for tightness according to standards established in 40 CFR 280, Subpart D. If the test indicates a release has occurred from the tank or product piping, then the tank or product piping shall be closed in compliance with 40 CFR 280, Subpart G, and R311-204, or repaired, or replaced. Tanks and product piping which are repaired or replaced shall be retested to demonstrate that the tanks or product piping are no longer releasing product. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release, and release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.~~

~~—(B) A site check, consistent with the site assessment standards defined in 40 CFR 280, Subpart E, must be performed.]~~

~~[(i)2] The owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program. The Executive Secretary ~~[must]~~shall review and approve the site check plan prior to its implementation. ~~[At a minimum, the site check must evaluate soils around and beneath all elements of the underground storage tank systems, including tanks, piping and dispensers, for potential evidence of contamination from petroleum releases. A sufficient number of soil samples shall be collected to be representative of soil conditions around the underground storage tank systems, and to assure, within practical limitations, that contamination is discovered, if present. In addition to soil samples, groundwater samples must be collected when groundwater is encountered during the process of soil sampling. Soil and groundwater sampling protocols, documentation and reporting requirements must conform to 40 CFR 280, Subparts E and F.~~~~

~~—(ii)]The site check ~~[must]~~shall meet the ~~[provisions for minimum]~~sampling requirements for USTs, dispensers and piping as defined ~~[for in-place closures]~~in Subsection[s] R311-205-2(b)[(2)(A), R311-205-2(b)(3)(A), and R311-205-2(b)(4)(A), respectively], or as determined by the Executive Secretary on a site-specific basis. Additional sampling may be required by the Executive Secretary based on review of the proposed site check plan and site specific conditions.~~

~~[—(2) All technical services for tank tightness testing and site checks provided under Section R311-205-2(c) must be performed by appropriately qualified and certified individuals as defined in Section R311-201-2.]~~

R311-205-2(c). Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program.

This rule is being modified to simplify redundant language used throughout the text. Some non-substantive language has been added or deleted to make the requirements easier to understand.

(d) Laboratory Analyses of Environmental Samples.

(1) Environmental samples which have been collected to determine levels of contamination from underground storage tanks shall be analyzed using appropriate laboratory analytical methods as referenced in the ~~[March 31, 1999 "Table of Analytical Methods for Sampling"]~~"Analytical Methods for Environmental Sampling at Underground Storage Tank Sites in Utah (July 2003)", or as determined by the Executive Secretary.

(2) Environmental samples which have been collected to determine levels of contamination by gasoline shall be analyzed for total petroleum hydrocarbons (purgeable TPH as gasoline range organics C₆ - C₁₀), benzene, toluene, ethylbenzene, ~~[and]~~xylenes and naphthalene (BTEXN), and for methyl tertiary butyl ether (MTBE).

(3) Environmental samples which have been collected to determine levels of contamination by diesel fuel shall be analyzed for total petroleum hydrocarbons (extractable TPH as diesel range organics C₁₀ - C₂₈), benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN).

(4) Environmental samples which have been collected to determine levels of contamination by used oil shall be analyzed for oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH); and

for benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN); methyl tertiary butyl ether (MTBE); and halogenated volatile organic compounds (VOX).

(5) Environmental samples which have been collected to determine levels of contamination by new oil shall be analyzed for oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH).

(6) Environmental samples which have been collected to determine levels of contamination from underground storage tanks which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the Executive Secretary.

(7) Environmental samples which have been collected to determine levels of contamination for an unknown petroleum product type shall be analyzed for total petroleum hydrocarbons (purgeable TPH as gasoline range organics C₆ - C₁₀); total petroleum hydrocarbons (extractable TPH as diesel range organics C₁₀ - C₂₈); oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH); benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN) and methyl tertiary butyl ether (MTBE); and for halogenated volatile organic compounds (VOX).

([7]8) All original laboratory sample results must be returned to the certified groundwater and soil sampler or certified UST consultant to verify all chain of custody protocols, including holding times and analytical procedures, were properly followed. Environmental samples shall be collected and transported under chain of custody according to EPA methods as approved by the Executive Secretary.

([8]9) Reporting limits used by laboratories analyzing environmental samples taken under this rule shall be below recommended cleanup levels for the contaminated media under study. Environmental samples shall be analyzed with the least possible dilution to ensure reporting limits are below recommended cleanup levels to the extent possible. If more than one determinative analysis is performed on any given environmental sample, the final dilution factor used and the reporting limit must be reported by the laboratory.

As an alternative to diluting environmental samples, the laboratory shall consider using appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference. Any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

R311-205-2(d). Laboratory Analyses of Environmental Samples.

Analytical requirements have been expanded for testing of an "unknown" product type. Typically, property transactions involving lending institutions are increasingly becoming more concerned with long-term liability, environmental cleanup costs and regulatory site closure. Therefore, it is important to determine the characteristics of the contaminants where it is not known what type of petroleum product was released. To assist prospective purchasers, current landowners, and lending institutions in minimizing their long-term liability concerns, the DERR is requiring an unknown substance to be fully analyzed for the entire spectrum of possible petroleum-related contaminants.

[(e) Recordkeeping:

— (1) The certified groundwater and soil sampler shall record the approximate depth below grade and location of each and every sample collected to within one foot:

— (2) A copy of the site plat, analytical laboratory results, chain of custody forms, and the closure notice as outlined in Section R311-204-4 shall be submitted to the Executive Secretary within 90 days after tank closure:

(3) Upon confirming a release, a site assessment report, an updated site plat, additional analytical laboratory results, chain of custody and any other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the Executive Secretary within the specified time frames as outlined in compliance schedules:]

KEY: hazardous substances, petroleum, underground storage tank*
October 4, 1999

R311. Environmental Quality, Environmental Response and Remediation.

R311-206. Underground Storage Tanks: Financial Assurance Mechanisms.

R311-206-1. Definitions.

Definitions are found in ~~[Section]~~Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners ~~[and]~~or operators of petroleum storage tanks shall:

- (1) meet all requirements for participation in the ~~[e]~~Environmental ~~[a]~~Assurance ~~[p]~~Program, or
- (2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) As specified in Subsections 19-6-428(1) and (2), owners ~~[and]~~or operators shall submit a completed Financial Responsibility Declaration to declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Executive Secretary determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

~~[(d) Owners and operators who show financial assurance by a method other than the Environmental Assurance Program shall submit with the Financial Responsibility Declaration, the name of the person authorized by the owner or operator to demonstrate financial responsibility.]~~

R311-206-2(d). This requirement is removed because the financial assurance documents submitted by the owner/operator generally include the name of the individual responsible for showing financial responsibility.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Executive Secretary shall issue a certificate of compliance to an owner[s] or operator[s] participating in the ~~[e]~~Environmental ~~[a]~~Assurance ~~[p]~~Program for individual petroleum storage tanks at a facility if:

- (1) the owner or operator has a certificate of registration;
- (2) the petroleum storage tank fee has been paid;
- (3) the tank is substantially in compliance with all state and federal statutes, rules and regulations;
- (4) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(5) the owner or operator has submitted a letter to the Executive Secretary stating that based on customary business inventory practices standards there has been no release from the tank; and[;]

(6) the owner or operator has submitted a completed application according to a form provided and approved by the Executive Secretary.

(b) The Executive Secretary shall issue a certificate of compliance to an owner~~[s-and]~~or operator[s] who elects to demonstrate financial assurance by a method other than the ~~[e]~~Environmental ~~[a]~~Assurance ~~[p]~~Program for individual petroleum storage tanks at a facility if:

- (1) the owner or operator has a certificate of registration;
- (2) the processing fee assessed by Subsection 19-6-408(2) has been paid;
- (3) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

(4) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(5) the owner or operator has submitted a letter to the Executive Secretary stating that based on customary business inventory practices standards there has been no release from the tank; and[;]

(6) the owner or operator has met the requirements of 40 CFR 280, subpart H and has demonstrated acceptable financial assurance. The Certificate of Compliance shall not be issued until the financial assurance documents submitted for review have been approved.

R311-206-4. Requirements for Environmental Assurance Program participants.

(a) To meet the requirements of Subsections 19-6-411(1)(a)(ii) and [~~Section~~]19-6-411(1)(b)(ii) the owner or operator shall submit:

(1) A letter to the Executive Secretary stating that the facility is not engaged in petroleum production, refining, or marketing, and

(2) Evidence, each fiscal year, of average annual throughput less than 10,000 gallons per month based on current inventory records.

(b) In accordance with Subsection 19-6-411(1)(c), the annual facility throughput rate, if reported, shall be reported to the Executive Secretary as a specific number of gallons, based on the throughput for the previous calendar year.

(c) In accordance with Subsection 19-6-411(1)(d), when a petroleum storage tank is initially registered with the Executive Secretary, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(d) In accordance with Subsection 19-6-411(6), the Executive Secretary may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(e) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its [~~initial~~]annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(f) Auditing of UST facility throughput records for fiscal year 1998.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility for the months of July 1997 through June 1998. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The executive secretary may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Executive Secretary.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Executive Secretary.

(D) All costs of an independent audit shall be paid by the owner or operator.

(g) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of \$10,000 upon request and to the satisfaction of the Executive Secretary. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Executive Secretary may require the owner or operator to submit an independent audit to demonstrate net worth for self insurance. The owner or operator

shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(f)(2).

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Executive Secretary the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

R311-206-5(a). Wording is added to specify the financial assurance documents that are to be submitted by owner/operators using alternate (other than the PST Fund) mechanisms to show financial responsibility. 40 CFR 280.111 specifies that the owner/operator will keep certain documents to show acceptable financial responsibility, but the federal regulations do not require that the o/o submit these documents to the implementing agency on a regular basis.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Executive Secretary is not in accordance with 40 CFR 280 subpart H, it shall be rejected and ~~will~~ shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2)(a) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent yearly review of a financial assurance document shall be due on July 1 annually.

R311-206-5(b). Wording is added to specify when the yearly processing fee payments are due- July 1 of each fiscal year. There is currently nothing in the rules or the UST Act to specify when the yearly mechanism review fees are due.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.10[2]7. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in ~~[Subpart]~~ Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the ~~[e]~~ Executive ~~[s]~~ Secretary, and an additional processing fee shall be paid in circumstances as determined by the Executive Secretary.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Executive Secretary ~~[at least once yearly as determined by the annual anniversary date or as required by changing to other forms of financial assurance:]~~ as follows:

(1) For State fiscal year 1998 evidence of financial assurance for all mechanisms shall be due to the Executive Secretary by June 15, 1997.

(2) Thereafter, proof of ~~[continued]~~ financial assurance shall be reported to the Executive Secretary and shall ~~[minimally]~~ include:

(A) Owners and operators using either financial test of self insurance shall ~~[report]~~ submit the "Letter from Chief Financial Officer" to the Executive Secretary within the maximum 120 day period specified in 40 CFR 280.95.

(B) Owners and Operators using insurance and risk retention group coverage for financial assurance shall ~~[report]~~submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Executive Secretary within 30 days of acceptance of such policy by the insurer or risk retention group. ~~[Each insurance policy must be amended by an endorsement or certificate of insurance that includes the following provisions as additions to the endorsement and certificate of insurance requirements specified in 40 CFR 280.97.~~

~~_____ (i) The insurance covers claims for the cost of corrective action and for compensating third parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases which are discovered during the coverage period. For purposes of this rule only, a release is discovered:~~

~~_____ (I) When a leak detection method under 40 CFR 280, subpart 280.43 or 280.44 indicates a release or suspected release, or~~

~~_____ (II) On the date when contamination is revealed at the UST site or in the surrounding area due to UST closure or environmental impacts from the contamination attributable to the UST.]~~

R311-206-5(c)(2)(B). This rule currently requires that the owner/operator using an insurance policy for financial assurance submit a policy endorsement or certificate of insurance which includes two provisions: 1) that the insurance covers a release that is found at the time it occurs by a functioning leak detection method, or is found later by closure or other evidence of contamination on or near the UST site, and 2) that the insurance provider notify the Executive Secretary if the policy is cancelled. The insurance industry has interpreted provision #1 as meaning that they must cover the release no matter when it is found, even if it is found several years after the policy is no longer in effect. Because of this interpretation, the industry has indicated it would stop issuing policies in Utah for UST financial assurance. Policies generally cover releases that occur and are reported within the coverage period or within six months of the end of the coverage period. Because this level of coverage is specified in the federal regulations, the requirement to submit a document with the wording that is currently required is now considered to be unnecessary and is removed. Provision #2 is kept, but is worded as a requirement that the insurance company must meet, rather than something that must be included in the endorsement or certificate of insurance.

~~([i]) If the insurance policy or risk retention group coverage is cancelled, t[F]he insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Executive Secretary as well as the insured.~~

~~_____ (ii) The insurer shall have a rating of A- or greater by A.M. Best Co.~~

(C) Owners and operators using an irrevocable letter of credit ~~[must]~~shall submit ~~[provide]~~proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Executive Secretary within 30 days of issuance from the issuing institution.

(D) Owners and operators using a fully funded trust fund for financial assurance shall ~~[report]~~submit proof of the trust fund and formal certification of acknowledgement to the Executive Secretary within 30 days after implementation of the trust fund.

~~_____ (E) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.~~

~~_____ (F) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance.~~

~~([3])~~G) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(H) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Executive Secretary within 120 days of the end of the owner/operator's or guarantor's fiscal year.

R311-206-5(c)(2)(E), (F), and (H) Wording is added to specify the financial responsibility documents that the owner/operator must submit for guarantees, surety bonds, and the local government financial assurance mechanisms.

~~[(4) If the alternate financial assurance mechanism is an insurance policy, the insurer shall have a rating of A- or greater by A.M. Best Co.]~~

(d) The Executive Secretary may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Executive Secretary within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.1[07]LL.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Executive Secretary may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Executive Secretary.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Executive Secretary shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Executive Secretary.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a)[;];

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D[;]; and

(3) meeting the upgrade requirements in 40 CFR 280[~~subpart 280~~].21 or the new tank requirements in 40 CFR 280[~~subpart 280~~].20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a)[;];

(2) meeting applicable requirements of the [1997 Uniform Fire Code]2000 International Fire Code, [Articles 52 and 79]Chapters 22 and 34, published by the International [Fire Code Institute]Code Council, Inc.[;];

R311-206-6(b)(2). This rule requires that owner/operators of above ground storage tanks show compliance with applicable sections of the fire code if they want those tanks to be covered by the PST

Fund. Because Utah now follows the International Fire Code, references to the Uniform Fire code are replaced with references to the applicable sections of the International Fire Code.

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping[;]; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(a) The Executive Secretary shall revoke a certificate[s] of compliance or registration if he determines that ~~[any]~~the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A~~[ny]~~ petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412~~[(2)]~~, Subsection 19-6-428(3), and Section R311-206-3.

(c) A~~[ny]~~ petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A~~[ny]~~ petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Executive Secretary may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. Proof of Certification.

(a) ~~[A valid certificate of compliance shall be at each tank facility. Where this is not possible, other methods may be approved by the Executive Secretary.]~~

~~————~~(b)]In accordance with Subsection 19-6-411(7), a tag or other means of identification shall be issued to each petroleum storage tank or underground storage tank which has demonstrated current compliance with Section 19-6-412 and Section R311-206-3 or Section R311-206-6. The tag or other means of identification shall ~~[be issued annually and shall]~~be displayed for view of the person delivering or placing petroleum product into an underground storage tank for which the tag was issued.

~~[(c)]~~(b) A tank shall not be issued a tag or other means of identification if the owner or operator has not satisfied the requirements of Section 19-6-412. An owner or operator shall not allow a tag to be displayed on a tank for which the Certificate of Compliance has been revoked or has lapsed, or on a tank for which the eligibility to receive payment for claims against the fund has lapsed unless the owner or operator has demonstrated compliance with financial assurance requirements.

R311-206-8(a). Remove the requirement that the certificate of compliance be visible on site at each UST facility. Documentation of compliance is achieved by tank tags, and the requirement that the certificate of compliance be on site is unnecessary.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(a) At any time after May 1, 1997, owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

(1) permanently closing tanks as outlined in 40 CFR 280, subpart G, ~~Section~~Rule R311-204, and ~~Section~~Rule R311-205, or

(2) meeting the following requirements:

(i) demonstrating compliance with ~~Section~~R311-206-5, and[-]

(ii) notifying the Executive Secretary at least 60 days before the date of cessation in the program, and specifying the date of cessation.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

(d) Owners and operators who voluntarily remove participating tanks from the program shall comply with the requirements of 19-6-428(3) before any subsequent participation in the program.

KEY: hazardous substances, petroleum, underground storage tanks*

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19-6-105

R311. Environmental Quality, Environmental Response and Remediation.

R311-212. Administration of the Petroleum Storage Tank Loan Fund.

R311-212-1. Definitions.

Definitions are found in Section R311-200.

R311-212-2. Loan Application Submittal.

(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-405.3(7). Loan eligibility applications shall be accepted during application periods designated by the Executive Secretary. To receive a loan the applicant shall complete the following steps:

(1) Submit and receive approval from the Executive Secretary of a loan eligibility application; and

(2) Submit and receive approval from the Executive Secretary of a financial application.

(b) As long as loan funds are available at least one application period shall be designated each fiscal year. Additional funds available through repayment of existing loans shall be loaned according to priorities from the most recent application period.

(c) Valid loan eligibility applications received during an application period shall be prioritized before review according to R311-212-4. Applications must be received by the Executive Secretary by 5:00 p.m. on the last day of a given application period.

(d) Loan eligibility applications received outside the application period shall be invalid.

R311-212-3. Loan Eligibility Application Review.

(a) The Executive Secretary shall review the eligibility application to determine if the applicant meets the criteria stated in Subsections 19-6-405.3(3), 19-6-405.3(4), 19-6-405.3(5) and 19-6-405.3(6).

(b) To meet the eligibility requirements of 19-6-405.3(4) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-405.3(4) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-405.3(3), the loan request must be for the purpose of:

(1) Upgrading or replacing existing petroleum USTs to meet requirements of 40 CFR 280.21;

(2) Installing a leak detection monitoring system; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

(e) The Executive Secretary shall notify the applicant in writing of the status of the loan eligibility application. If the loan eligibility application is approved, the applicant may submit a financial application.

R311-212-4. Prioritization of Loan Eligibility Applications.

(a) When determined by the Executive Secretary to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Executive Secretary by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of eligibility applications which have not been reviewed terminates. An applicant whose eligibility application has not been reviewed or an applicant whose eligibility application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-405.3(3) through (6), loses eligibility to apply for a loan and must submit a new eligibility application in the subsequent period to be considered for a loan in that period.

R311-212-5. Financial Application Review.

(a) The applicant shall file a financial application with the Executive Secretary within 60 days after the Executive Secretary mails written notice of approval of the applicant's loan eligibility application. The

completed application with supporting documents shall contain all information required by the financial application. If the financial application is not received by the Executive Secretary within 60 days, the applicant's eligibility application approval shall be forfeited.

(b) All costs incurred in processing the financial application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Executive Secretary may require payment of costs in advance. The Executive Secretary shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) Financial applications shall be reviewed in the order in which they are received. The approval of the financial application shall be based on information provided by the applicant, and:

- (1) review of any and all records and documents on file;
- (2) verification of any and all information provided by the applicant;
- (3) review of credit worthiness and security pledged; and
- (4) review of a site construction work plan.

(d) The Executive Secretary shall notify the applicant in writing of the status of the application when the review is complete.

(e) The applicant must close the loan within 30 days after the Executive Secretary mails the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must ~~[wait until the next application period]~~ re-apply. Any subsequent application must start with an eligibility application. An exception to the 30 day period may be granted by the Executive Secretary if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) The loan applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position.

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(3) A current written appraisal on the property to be used as security must be submitted to the Executive Secretary. All appraisals must be performed by State of Utah certified appraisers.

(4) Personal property, unless the personal property security interest accompanies a real property security interest, shall be used as security only on loans of less than \$15,000 and for a loan period of a maximum of 5 years. Personal properties shall be lien-free.

(b) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Executive Secretary by a title company or appropriate professional person approved by the Executive Secretary.

(c) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(d) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(e) The applicant must provide a complete financial statement with cash flow projections for debt service.

(f) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(g) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

R311-212-7. Procedure for Making Loans.

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Executive Secretary.

(b) Loan proceeds shall be disbursed to the applicant after closing documents are processed, work at the site is completed, and all paperwork and notifications have been received by the Executive Secretary. The loan proceeds may be disbursed jointly to the applicant and the contractor who completed the work. If the loan amount exceeds the allowable project costs, the Executive Secretary may credit any difference to the applicant's account rather than disbursing excess proceeds to the applicant.

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's eligibility and financial applications are approved and the loan is closed.

R311-212-8. Servicing the Loans.

(a) The Executive Secretary shall establish a loan repayment schedule for each borrower based on the financial situation and income circumstances of the borrower and within the term of loans allowed by Subsection 19-6-405.3(6)(e). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(b) The initial installment payment is due on a date established by the Executive Secretary. Subsequent installment payments are due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(c) The Executive Secretary shall apply loan payments received first to penalty, next to interest and then to principal.

(d) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Executive Secretary more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Executive Secretary by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge of twenty dollars shall be added to the payment amount due.

R311-212-8(f). Add a reference to the service charge assessed for loan payment checks that are returned due to insufficient funds.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Executive Secretary's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing under section R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Executive Secretary may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Executive Secretary need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Section R311-212, and shall be used by the Executive Secretary for making loans.

- (1) Loan Eligibility Application version 12/08/94
- (2) Financial Application version 06/15/95
- (3) Balance Sheet version 06/15/95
- (4) Loan Commitment Agreement version 06/15/95
- (5) Corporate Authorization version 06/15/95
- (6) Promissory Note version 06/15/95
- (7) Extension and Modification Agreement version 06/15/95
- (8) Security Agreement version 06/15/95
- (9) Hypothecation Agreement 06/15/95
- (10) General Pledge Agreement 06/15/95
- (11) Assignment 06/15/95
- (12) Assignment of Account 06/15/95
- (13) Trust Deed
 - (i) property with underground storage tanks version 06/15/95; or
 - (ii) property without underground storage tanks version 06/15/95.

(b) The Executive Secretary may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Executive Secretary may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

KEY: hazardous substances, petroleum, underground storage tanks

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19-6-405.3